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INSURANCE—AVOIDANCE OF POLICY—"ACTIVE MILITARY OR NAVAL SERVICE."—The insured had a life policy in the defendant company. The application for the insurance provided that the contract should be avoided if the insured should, without the consent of the insurer, enter into "active service in the army or navy, in time of war." During the late war the insured, without the consent of the defendant company, enlisted in the United States Army. While stationed in a training camp in this country, he died of pneumonia. The beneficiary brought action to recover the face value of the policy. *Held*, he can recover. *Redd v. American Central Life Insurance Co.* (Mo.), 207 S. W. 74.

The authorities are in accord that where one merely performs work necessary to military operations, or engages in occupations complementary to martial preparation, but does not actually enlist in the forces or become amenable to military discipline, he does not thereby enter "military or naval service," within the meaning of such a stipulation in an insurance policy. Thus, where an insured's policy contained such an inhibiting clause, and, during time of war, he accepted a position as clerk in the office of the assistant adjutant general, but held no commission and was subject to no military order, the policy was not avoided. *New York Life Ins. Co. v. Hendren*, 24 Gratt. (Va.) 536. And one employed in supervising the construction of bridges, in time of war, although the railroads on which the bridges were located were under the direction of the authorities of the United States, and were used by them for military purposes exclusively, and although he and those working under him were paid by the military paymaster, was not in the "military service" of the United States, within the meaning of such a clause in his insurance policy. *Welts v. Connecticut Life Ins. Co.*, 48 N. Y. 34.

But it is equally well settled that a prohibition against entrance into "military or naval service" which does not contain the word "active," is violated when an insured merely enlists in such service in time of war. Thus, where an insured was permitted, under the terms of his policy, to enter the military service of the United States, in time of war, only upon notification to the company and payment of an extra premium, and, having failed to comply with these conditions, was killed by a native, while serving with the regular army in a region where an insurrection against the government was in progress, it was held that his beneficiaries could not recover the face value of the policy. *La Rue v. Kansas Mut. Life Ins. Co.*, 68 Kan. 539, 75 Pac. 494.

The question as to who is in the "military or naval service," is intensely important at the present time. Interpretation of the words found in insurance policies, has been exceedingly rare. Whether active members of the Army Y. M. C. A. or the American National Red Cross Service come within their meaning, remains undetermined. However, in the interpretation of the Federal Espionage Act, both organizations are held to be parts of the military forces of the United States. *United States v. Nagler*, 252 Fed. 217.

The instant case attempts to make a distinction between "active military or naval service" and mere "military or naval service." The

line of cleavage seems extremely vague in modern warfare, and the distinction, therefore, hardly practicable.

**LIBEL AND SLANDER—QUALIFIED PRIVILEGE—PUBLIC OFFICIALS.**—The defendant, a newspaper corporation, published articles charging the plaintiff, a penitentiary warden, with mismanagement of the state penitentiary and brutal treatment of prisoners. The plaintiff brought an action for libel. *Held*, the plaintiff cannot recover. *McClung v. Pulitzer Publishing Co.* (Mo.), 214 S. W. 193.

At common law, before recognition of the doctrine of the "freedom of the press," there existed no privilege of discussion or criticism of governmental officials. See *Queen v. Tutchin*, 14 How. St. Tr. 1095. In both England and America, however, the present rule is that fair comment on the public acts of public officials is qualifiedly privileged. *Diener v. Star Chronicle Co.*, 230 Mo. 613, 132 S. W. 1143, 33 L. R. A. (N. S.) 216. See *Burt v. Advertiser Newspaper Co.*, 154 Mass. 238, 28 N. E. 1, 13 L. R. A. 97.

The privilege of fair comment embraces the right to express honest opinions upon, and to draw just and reasonable inferences from, the facts. *Cook v. Pulitzer Pub. Co.*, 241 Mo. 326, 145 S. W. 480. According to the great weight of English and American authority, the qualified privilege rule, while extending protection to comment made in good faith, even though it be mistaken in opinions or inferences, does not grant immunity to false statements of fact. *Davis v. Shepstone*, L. R., 11 App. Cas. 187, 50 J. P. 709, 55 L. J. P. C. 51; *Hallam v. Post Pub. Co.*, 55 Fed. 456; *Williams Printing Co. v. Saunders*, 113 Va. 156, 73 S. E. 472; *Bronson v. Bruce*, 59 Mich. 467, 126 N. W. 671, 60 Am. Rep. 307. But it is held in some states, because of the public interest of the subject matter, that false statements made in comment on public affairs are privileged when there is honest belief in their truth and probable ground for such belief. *Coleman v. MacLennan*, 78 Kan. 711, 98 Pac. 281, 130 Am. St. Rep. 390, 20 L. R. A. (N. S.) 361; *Briggs v. Garrett*, 111 Pa. St. 404, 2 Atl. 513, 56 Am. Rep. 274. The former doctrine, clearly maintaining the distinction between comment proper and statement of fact, is sounder on principle and from considerations of public policy. See treatise by Judge Veeder, 23 HARV. LAW REV. 413.

The qualified privilege is destroyed by proof that the publication was inspired by actual or express malice. *Tyrce v. Harrison*, 100 Va. 540, 42 S. E. 295. See *Chaffin v. Lynch*, 83 Va. 106, 1 S. E. 803, (an action brought under the so-called "Anti-Dueling Act"). Express malice, in this sense, is defined as an "indirect and wicked motive which induces the defendant to defame the plaintiff." See *Hemmens v. Nelson*, 138 N. Y. 517, 34 N. E. 342, 20 L. R. A. 440, citing *ODGERS, LIBEL AND SLANDER*, 267. After qualified privilege has been established by the defendant, the burden of proving actual malice rests upon the plaintiff. *Strode v. Clement*, 90 Va. 553, 19 S. E. 177.

The question whether a publication is qualifiedly privileged, where there is no controversy as to the circumstances under which it was made, is for the court to determine. *Williams Printing Co. v. Saunders*, *supra*. But whether or not the publication was actuated by malice, is a